



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0135]

RIN 1625-AA00

Safety Zones; Fireworks Displays, Air Shows and Swim Events in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to add one safety zone for the Dolan Family Labor Day Fireworks event on Oyster Bay, NY, and remove six other annual recurring marine events in Coast Guard Sector Long Island Sound's Captain of the Port Zone. This proposed rule is intended to expedite public information and to ensure the protection of the maritime public and event participants from the hazards associated with certain marine events. When enforced, the safety zones would restrict vessels from transiting the regulated area during annually recurring events. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2021-0135 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician 1st Class Chris Gibson, Waterways Management Division, Sector Long Island Sound; Tel: (203) 468-4565; Email: chris.a.gibson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

Marine events are held on an annual recurring basis on the navigable waters within the Coast Guard Sector Long Island Sound Captain of the Port (COTP) Zone. The Coast Guard has established safety zones for some of these annually recurring events on a case by case basis to ensure the protection of the maritime public and event participants from potential hazards.

Regulations establishing safety zones to restrict vessel traffic are located in part 165 of Title 33 of the Code of Federal Regulations. Section 165.151 in part 165 establishes safety zones to ensure the safety and security of marine related events, participants, and spectators in Sector Long Island Sound's area of responsibility. The COTP of Long Island Sound proposes to amend Table 1 and 2 of 33 CFR 165.151 Safety Zones; Fireworks Displays, Air Shows, and Swim Events in the COTP Long Island Zone because updating the recurring events will considerably reduce administrative overhead and provide the public with notice through publication in the Federal Register of the upcoming recurring safety zone.

The Secretary of Homeland Security has delegated to the Coast Guard authority

under section 70041 of Title 46 of the U.S. Code (46 U.S.C. 70041) to issue these regulations.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone for the annual Dolan Family Labor Day Fireworks event by adding this event to Table 1 to CFR 165.151. The event would occur on a single day in September at a time to be determined. The regulated area would encompass waters of Long Island Sound off of Oyster Bay, NY. When enforced on the single day in September each year, this safety zone would restrict vessels from transiting the regulated area. The specific proposed description of this proposed regulation appears at the end of this document.

Additionally, this rulemaking proposes to update Table 1 and 2 to CFR 165.151 by removing six events that no longer take place. The Coast Guard proposes to remove event 5.1 Jones Beach Air Show safety zone from Table 1 and remove five events from Table 2: (1) 1.1 Swim Across the Sound; (2) 1.3 Maggie Fischer Memorial Great South Bay Cross Bay Swim; (3) 1.4 Waves of Hope Swim; (4) 1.5 Stonewall Swim; and (5) 1.6 Swim Across America Greenwich safety zones.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a

“significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the established safety zones. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone and the rule would allow vessels to seek permission to enter the area. Vessel traffic would also be able to request permission from the COTP or a designated representative to enter the restricted area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or

governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,

or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves adding and removing an annually recurring marine event in Table 1 in 33 CFR 165.151 and removing five recurring marine events from Table 2 in 33 CFR 165.151. Normally such actions are categorically excluded from further review under paragraph L60(a) and L60(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment

can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;
Department of Homeland Security Delegation No. 0170.1

2. Amend Table 1 in §165.151 by inserting item 9.7, in numerical order, to read as follows:

§165.151 Safety Zones; Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone.

Table 1 to § 165.151

9***	September
9.7 Dolan Family Labor Day Fireworks	• Date: A single day event in September.
	• Location: Waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY in approximate position 40°53'43.50" N, 073°30'06.85" W

§165.151 [Amended]

3. Amend §165.151 by:

a. Removing in Table 1 item 5.1 Jones Beach Air Show;

b. Removing in Table 2 items 1.1 Swim Across the Sound, 1.3 Maggie Fischer Memorial Great South Bay Cross Bay Swim, 1.4 Waves of Hope Swim, 1.5 Stonewall Swim and 1.6 Swim Across America Greenwich.

Dated: April 29, 2021

E. J. VAN CAMP,
Captain, U.S. Coast Guard,
Captain of the Port Long Island Sound.

